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1909

# THE LAWS

RELATING TO

## THE PUBLIC RECORDS AND PUBLIC DOCUMENTS,

WITH

OPINIONS OF THE ATTORNEYS-GENERAL.

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ISSUED BY THE COMMISSIONER OF PUBLIC RECORDS.

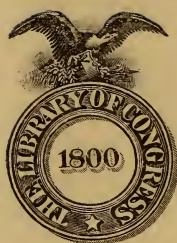


BOSTON:

WRIGHT & POTTER PRINTING CO., STATE PRINTERS,  
18 POST OFFICE SQUARE.

1909.





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# LAWS.

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## Revised Laws, Chapter 35.

### OF THE PUBLIC RECORDS.

SECTIONS 1-4. — Commissioner of Public Records.

SECTIONS 5-23. — Public Records.

#### COMMISSIONER OF PUBLIC RECORDS.

SECTION 1. There shall be a commissioner of public records, who shall be appointed by the governor, with the advice and consent of the council, for a term of three years, unless sooner removed by the governor.

Commissioner of public records.  
Res. 1889, 103.  
1892, 333, § 1.

SECTION 2. He shall receive from the commonwealth an annual salary of twenty-five hundred dollars, and he may expend not more than twenty-five hundred dollars annually for such travelling, clerical and other necessary expenses as the governor and council may approve.

Salary and expenses.  
1892, 333, § 2.

SECTION 3. He shall take the necessary measures to put the records of the counties, cities, towns, churches, parishes or religious societies in the custody and condition required by law and to secure their preservation, and for that purpose he may expend from the amount appropriated for expenses such amount as he considers necessary.

Duties.  
1892, 333, § 3.  
1898, 67.  
[1 Op. A. G. 207.]

SECTION 4. He shall annually, in January, make a report to the general court, with any recommendations and suggestions as to such records.

Report.  
1892, 333, § 4.

#### PUBLIC RECORDS.

SECTION 5. In construing the provisions of this chapter and other statutes, the words "public records" shall, unless a contrary intention clearly appears, mean any written or printed book or paper, any map or plan of the commonwealth or of any county, city or town which is the property thereof and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the commonwealth or of a county, city or town has received or is required to receive for filing, and any book, paper, record or copy mentioned in the six

Definition of public records.  
1897, 439, § 1.  
(See amendment to section 23.)

following sections. The word "record" shall, in this chapter, mean any written or printed book, paper, map or plan.

SECTION 6. All matters of public record other than maps and plans shall be entered or recorded on paper made of linen rags and new cotton clippings, well sized with animal sizing and well finished, and preference shall be given to paper of American manufacture marked in water line with the name of the manufacturer.

SECTION 7. The commissioner shall from time to time advertise for proposals to furnish the several departments and offices of the commonwealth, and of the counties, cities or towns in which public records are kept, with ink of a standard, and upon conditions, established by him, at such periods and in such quantities as may be required, and he may make contracts therefor. The inks so furnished, before being accepted by him, shall be examined by a chemist designated by him and, if at any time any of said inks shall be found inferior to the established standard, the commissioner may cancel the contract for furnishing such ink.

SECTION 8. Persons having the care or custody of public records in any department or office of the commonwealth, or of any county, city or town, shall not, except as provided in the following section, use or permit to be used upon any public record written by them or under their direction any ink except ink furnished by the commissioner.

SECTION 9. Such persons shall not use or permit to be used upon such records any ribbon, pad or other device used for printing by typewriting machines, or any ink contained in such ribbon, pad or device, except such as has been approved by the commissioner. If the commissioner finds that an article so approved is inferior to the standard established by him he shall cancel his approval.

SECTION 10. Whoever violates the provisions of the two preceding sections shall be punished by a fine of not more than fifty dollars.

SECTION 11. Every board or commission in charge of a department or office of the commonwealth or of a county, city or town, for which no clerk is otherwise provided by law, shall designate some person as clerk, who shall enter all its votes, orders and proceedings in books and shall have the custody of

Quality of  
paper for pub-  
lic records.  
1815, 73.  
R. S. 14, § 116.  
G. S. 29, 1.  
P. S. 37, § 1.  
1891, 281.  
1897, 439, § 1.

Standard  
record ink.  
1894, 378.  
1898, 510.  
1899, 354,  
§§ 2, 3.

Prohibition.  
1894, 378.  
1898, 510.  
1899, 354, § 1.

Certain appli-  
ances forbid-  
den.  
1899, 354, § 4.

Penalty.  
1898, 510.  
1899, 354, § 5.

Custody of  
records; clerk.  
1897, 439,  
§§ 2, 3.



such books, and the board or commission shall designate an employee or employees who shall have the custody of the other public records of such board or commission. Every sole officer in charge of a department or office of the commonwealth or of a county, city or town who has any public records in such department or office shall have the custody thereof.

SECTION 12. Every city or town clerk shall have the custody of all records of proprietors of towns, townships, plantations or common lands, if the towns, townships, plantations or common lands to which such records relate, or the larger part thereof, are within his city or town and the proprietors have ceased to be a body politic. The secretary of the commonwealth, clerk of the county commissioners and city or town clerks shall respectively have the custody of all other public records of the commonwealth or of the county, city or town of which he is clerk, if no other disposition of such records is made by law or ordinance, and shall certify copies thereof.

Custody of  
ancient  
records.  
1783, 39, § 9.  
R. S. 43, § 17.  
1851, 161,  
§§ 5, 8.  
G. S. 29,  
§§ 11, 12.  
P. S. 37,  
§§ 14, 15.  
1890, 227.  
1892, 314, § 3.  
1897, 439, § 3.

SECTION 13. If a church, parish, religious society, monthly meeting of the people called Friends or Quakers, or any similar body of persons who have associated themselves together for the purpose of holding religious meetings, shall cease for the term of two years to hold such meetings, the persons having the care of any records or registries of such body, or of any officers thereof, shall deliver all such records, except records essential to the control of any property or trust funds belonging to such body, to the clerk of the city or town in which such body is situated and such clerk may certify copies thereof. If any such body, the records or registries of which, or of any officers of which, have been so delivered, shall resume meetings under its former name or shall be legally incorporated, either alone or with a similar body, the clerk of such city or town shall, upon demand in writing by a person duly authorized, deliver such records or registries to him if he shall in writing certify that to the best of his knowledge and belief said meetings are to be continued or such incorporation has been legally completed. The superior court shall have jurisdiction in equity to enforce the provisions of this section.

Church  
records.  
1892, 314, § 3.  
1897, 439, § 3.  
1898, 453.

SECTION 14. Every original paper belonging to the files of the commonwealth, or of any county, city or town, bearing date earlier than the year eighteen hundred, every book of registry

Preservation  
of papers.  
1894, 356,  
§§ 1, 2.  
1897, 439, § 4.

or record, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, highways, streets, town ways, sewers or other state, county or municipal interests or matters which are not required to be recorded in a book, and are not so recorded, shall be preserved and safely kept, and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law; and no such paper shall be destroyed without the written approval of the commissioner of public records.

SECTION 15. County commissioners, city councils and selectmen may cause copies of records of counties, cities or towns, of town proprietaries, of proprietors of plantations, townships or common lands, relative to land situated in their county, city or town or of easements relating thereto, to be made for their county, city or town, whether such records are within or without the commonwealth. City councils and selectmen may also cause copies to be made of the records of births, baptisms, marriages and deaths which are kept by a church or parish which is in their city or town.

SECTION 16. Every person who has the custody of any public record books of a county, city or town shall, at its expense, cause them to be properly and substantially bound. He shall have any such books, which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable. He shall cause fair and legible copies to be seasonably made of any books which are worn, mutilated or are becoming illegible, and cause them to be repaired, rebound or renovated. He may cause any such books to be placed in the custody of the commissioner of public records, who may have them repaired, renovated or rebound at the expense of the county, city or town to which they belong. Whoever causes such books to be so completed or copied shall attest them, and shall certify, under oath, that they have been made from such files and memoranda or are copies of the original books. Such books shall then have the force of the original records.

SECTION 17. Every person who has the custody of any public records shall, at reasonable times, permit them to be inspected and examined by any person, under his supervision, and shall furnish copies thereof on the payment of a reasonable fee. In

Copies of  
records.

1857, 84,  
§§ 1, 2,  
G. S. 29,  
§§ 5, 6,  
1865, 265.  
1874, 162.  
P. S. 37,  
§§ 5, 6, 9,  
1887, 202, § 1.  
1897, 439, § 5.

Preservation  
of worn  
records.

1851, 161,  
§§ 2, 6,  
1857, 84,  
§§ 1, 2,  
G. S. 29,  
§§ 2, 7, 8.  
P. S. 37,  
§§ 2, 7, 8,  
1897, 439,  
§§ 6, 8,  
[I Op. A. G.  
484.]

Records open  
for inspection.

1857, 84, § 3.  
1851, 161, § 4.  
G. S. 29, § 10.  
P. S. 37, § 13.  
1897, 439, § 7.

cities and towns such inspection and furnishing of copies may be regulated by ordinance or by-law.

SECTION 18. Officers or boards in charge of a state department, county commissioners, city councils and selectmen shall, at the expense of the commonwealth, county, city or town, respectively, provide and maintain fireproof rooms, safes or vaults for the safe keeping of the public records of their department, county, city or town, other than the records in the custody of teachers of the public schools, and shall furnish such rooms only with fittings of non-combustible materials.

Fireproof vaults.  
1811, 165.  
R. S. 14, § 104.  
1851, 161,  
§§ 1, 2.  
1857, 97, § 1.  
G. S. 29,  
§§ 3, 4.  
P. S. 37,  
§§ 3, 4.  
1897, 439, § 10.

SECTION 19. All such records shall be kept in the rooms in which they are ordinarily used, and so arranged that they can be conveniently examined and referred to. When not in use, they shall be kept in the fireproof rooms, vaults or safes provided for them.

Arrangement of records for reference.  
1897, 439, § 9.

SECTION 20. Whoever is entitled by law to the custody of public records shall demand the same from any person in whose possession they may be, and he shall forthwith deliver the same to him.

Custodian to demand records.  
1897, 439, § 9.

SECTION 21. Whoever has the custody of any public records shall, upon the expiration of his term of office, employment or authority, deliver over to his successor all such records which he is not authorized by law to retain, and shall make oath that he has so delivered them, according as they are the records of the commonwealth or of a county, city or town, before the secretary of the commonwealth, the clerk of the county commissioners or the city or town clerk, who shall, respectively, make a record of such oath.

Surrender of records by retiring officer.  
1891, 340.  
1897, 439, § 11.

SECTION 22. Whoever unlawfully keeps in his possession any public record or removes the same from the room in which it is usually kept, or alters, defaces, mutilates or destroys any public record or violates any provision of this chapter shall, for each offence, be punished by a fine of not less than ten nor more than five hundred dollars. A public officer who refuses or neglects to perform any duty required of him by this chapter shall, for each month of such neglect or refusal, be punished by a fine of not more than twenty dollars.

Penalties.  
1851, 161,  
§§ 4, 5, 7, 8.  
1857, 97, § 2.  
G. S. 29, § 13.  
P. S. 37, § 16.  
1890, 392.  
1897, 439, § 12.

SECTION 23. The provisions of this chapter shall not apply to the records of the general court. [The provisions of sections five and seventeen of this chapter shall not apply to declarations,

Limit of application of chapter.  
1897, 439, § 13.

affidavits and other papers filed by claimants in the office of the commissioner of state aid and pensions; nor to any records kept by said commissioner for use for reference by the officials of his department.]<sup>1</sup>

**Revised Laws, Chapter 162.**

Court rooms,  
rooms for  
records, etc.,  
to be provided.  
1823, 141, § 4.  
R. S. 83, § 54.  
G. S. 117, § 31.  
1872, 125.  
1876, 234, § 1.  
P. S. 156, § 42.

SECTION 51. County commissioners shall provide and maintain suitable rooms for the use of the probate courts, ample fireproof rooms and suitable alcoves, cases, and boxes for the safe keeping of all records, files, papers, and documents which belong to the several registries of probate, and shall also provide all books which may be necessary for keeping the records, and all printed blanks and stationery which are used in probate proceedings.

Same subject.  
1876, 234, § 2.  
P. S. 156, § 43.

SECTION 52. If in the opinion of a justice of the supreme judicial court the fireproof rooms provided under the preceding section are insufficient, he shall upon application of the judge or register of probate of the county, certify the need of additional accommodations to the county commissioners of such county, and they shall forthwith provide such additional fireproof rooms and other accommodations as may be necessary.

**Acts of 1902, Chapter 311.**

Custody of  
certain public  
records of  
Norfolk  
county.

SECTION 1. All public records of the county of Norfolk prior to the year sixteen hundred and eighty-one which shall be found within the Commonwealth, except those now in the registry of deeds for the southern district of Essex county, shall be deposited in the office of the clerk of the courts in Essex county.

Custody of  
certain public  
records.

SECTION 2. Any public records, except those mentioned in the foregoing section, deposited elsewhere than in the office in the county, city or town to which they respectively originally belonged, shall be kept in the custody of the person having the custody of similar records in such original county, city or town. But this section shall not apply to the records of the town of Adams deposited in North Adams, under the provisions of chapter one hundred and forty-three of the acts of the year eighteen hundred and seventy-eight.

Certain per-  
sons to deliver  
records upon  
demand.

SECTION 3. Whoever under the provisions of this act is to become the custodian of any of the records mentioned in this act shall demand the same from any person in whose possession

<sup>1</sup> Amendment, chapter 177 of the Acts of 1903.



they may be, and such person shall forthwith deliver the same to him.

SECTION 4. Whoever refuses or neglects to perform any duty <sup>Penalty.</sup> required of him by this act shall be punished by a fine of not more than twenty dollars.

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#### STAMPING PADS IN PUBLIC RECORDS.

Section 9 of chapter 35 of the Revised Laws has been amended, to authorize the use of stamping pads in public records, as follows: —

##### **Acts of 1908, Chapter 57.**

SECTION 9. Such persons shall not use or permit to be used upon such records any ribbon, pad or other device used for printing by typewriting machines, or stamping pad, or any ink contained in such ribbon, pad, device, or stamping pad, except such as has been approved by the commissioner. If the commissioner finds that an article so approved is inferior to the standard established by him he shall cancel his approval.

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#### PUBLIC DOCUMENTS.

The following changes have been made in the laws regarding the books, reports and laws distributed by the Commonwealth to the cities and towns.

Chapter 117 of the Acts of 1907 has been amended to read as follows: —

##### **Acts of 1908, Chapter 142.**

SECTION 1. Every city and town shall provide a suitable place, or places, to be approved by the commissioner of public records, for the preservation and convenient use of all books, reports and laws received from the commonwealth; and for every month's neglect so to do shall forfeit ten dollars.

SECTION 2. Said books, reports and laws shall be in the custody or control of the city or town clerk, unless the city council or selectmen shall, by vote, designate some other officer, the town counsel or other person to have said custody or control either of all or part of the same.

Section 8 of chapter 9 of the Revised Laws has been amended by adding at the end of the first paragraph thereof the following:—

**Acts of 1908, Chapter 422.**

In case a city or town at any annual city or town election shall vote not to receive the series of public documents, and the commissioner of public records shall report to the secretary of the commonwealth that in his opinion such city or town is unable to make suitable provision for the care and use of such documents, he may discontinue sending them to such city or town.

## OPINIONS.

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 BOSTON, June 4, 1890.

TO HIS EXCELLENCY JOHN Q. A. BRACKETT, *Governor*.

DEAR SIR:— I have the honor to reply to yours of the 2d instant, asking my opinion on the question, "Can city governments and selectmen erect brick vaults in the place of fireproof safes, under the provisions of chapter 37, section 4, of the Public Statutes?"

The language of the section is: "City governments and selectmen shall provide, at the expense of their respective cities and towns, fireproof safes of ample size for the preservation of books of record or registry, and other important documents or papers belonging to such cities and towns; and the clerk of each city and town shall keep in the safe so provided all such books, papers, and documents at all times except when they are wanted for use."

A brick vault, properly constructed, in my opinion would be a fireproof safe. It is not necessary that the safe should be an iron safe. The provisions of the law would be answered if a properly constructed fireproof brick vault, or fireproof iron safe, should be provided.

The law is that the "city government and the selectmen shall provide at the expense of their respective cities and towns."

It is the duty of the city governments and the selectmen of towns to provide the fireproof safes, as the law provides, regardless of the question whether a city or town has or will refuse to appropriate money to pay for them. The expense of the safes would be a valid claim against the cities and towns, and the collection thereof from the cities and towns could be enforced by law. It would be their duty to raise and appropriate money to pay such expenses, and it may be, though of this I am not certain, that, after the expense had been incurred, an indictment under section 16 of said chapter would lie against a city or town for a refusal or neglect to perform such duty. The city government and selectmen of towns, I think, might be subject to indictment for a non-performance of their duties, and could also be by mandamus, or some other suitable process, compelled specifically to discharge their duties and provide the safes.

Very respectfully yours,

A. J. WATERMAN,  
*Attorney-General.*

## PUBLIC RECORDS. — CHURCH RECORDS.

[Opinions Attorney-General, Vol. 1, p. 207.]

The Commissioner of Public Records has no authority to require the records of existing churches, parishes, or religious societies to be kept with the same safety required in the case of city, county, or town records.

I take pleasure in acknowledging your letter of February 6, asking my opinion as to whether, under St. 1892, c. 333, § 3, you have any authority to require that the records of existing churches, parishes, or religious societies shall be kept with the same safety required for county, city, or town records.

It is your duty under the said act of 1892 "to take such action as may be necessary to put the public records of the counties, cities, towns, churches, parishes, or religious societies of the Commonwealth in the custody and condition contemplated by the various laws relating to said records, and to secure their preservation."

The laws relating to the preservation, condition, and custody of the public records of the Commonwealth are embraced in Pub. Sts., c. 37, and the various amendments thereto. These acts, with the exception of Pub. Sts., c. 37, § 15, are all limited, as regards this question, to the custody and preservation of the records of counties, towns, and cities. The only instance where legal provision is made for the preservation of the records of a church or religious society occurs in said section 15, which provides, in the case of a church or religious society ceasing to have a legal existence, and when the care of its records and registries is not otherwise provided for by law, that the person having possession of such records or registries shall deliver them to the clerk of the city or town in which said church or society was situated.

In the case, therefore, of an existing church, parish, or religious society, there is no legal provision regulating the preservation of its records. And, although it may be true that in many cases the earliest records concerning the town in question are embraced within the records of some church, parish, or religious society, it cannot be said that this would make a record belonging to such a body the record of a town or city within the meaning of the words of the statutes. The words "records of the counties, cities, or towns," as used in the statutes, mean the records owned by such bodies, and cannot include the records concerning the towns in question, however valuable they may be from some historical point of view, which belong to another corporate body not included in the words "counties, cities, or towns."

It is your duty, therefore, in the case of the records of churches, parishes, or religious societies of the Commonwealth, to see that such records shall



be kept in the custody and condition contemplated by the various laws relating to churches, parishes, or religious societies; and you cannot require the records of these bodies to be kept in the manner prescribed for counties, cities, or towns. If such a course be desirable, your only remedy is to secure adequate legislation.

It might be claimed, under the authority of the words "and to secure their preservation," in section 3 quoted above, that you were given the power in question. The clause is ambiguous, and it is a question whether it should not be read as meaning that you were to secure their preservation in the manner contemplated by the various laws relating to records. But, however this question may be answered, I do not think that this clause is sufficient to give you authority to require that the records of churches, parishes, or religious societies should be kept with the same safety required by the statutes in case of county, city, or town records.

PUBLIC RECORDS. — TOWN DOCUMENTS. — WARRANTS FOR HOLDING  
TOWN MEETINGS.

[Opinions Attorney-General, Vol. 1, p. 325.]

St. 1894, c. 356, requiring the preservation of certain town documents for several years only, does not apply to warrants for the holding of town meetings. Such warrants should be permanently preserved.

Your letter of April 5 requests my opinion upon the question whether, under St. 1894, c. 356, town clerks are required to preserve warrants for town meetings longer than seven years.

Section 1 provides that certain documents shall not be destroyed, to wit, (1) books of record or registry; (2) original papers dated earlier than the year 1800; (3) deeds; and (4) reports of "any town officer or committee of any county, city, or town relating to bridges, highways, streets, town ways, sewers, or other county or municipal interests or matters." It is obvious that town warrants are not included within the provisions of this section. Section 2 prohibits the destruction of any other paper belonging to the files of the town until after seven years. In answering your question literally, therefore, it is plain that under the provisions of this statute town warrants need not be kept longer than seven years.

But I do not regard this statute as intended to be comprehensive of all the duties of the town officers relating to the preservation of documents. It prohibits the destruction of certain documents within seven years, and is not intended to require or permit such destruction, even at the end of seven years, if for any reason, they should be preserved.

The warrant for the town meeting, and the return of service of it, are essential to give validity to the proceedings of town meetings. If there is no warrant, or it is improperly or insufficiently served, the title of the officers chosen at the meeting may be directly, and in some cases, perhaps, collaterally, impeached. Most proceedings become of little importance after the expiration of the year, but some may be questioned even after the expiration of seven years; as, for example, town by-laws or long time loans. In such cases, the warrant and its service may at any time become of vital importance. It is evident, therefore, that the statute requiring preservation of town documents for seven years has no application to town meeting warrants; and that they should be permanently preserved. It may be said that the recording of the warrant, and of the return of service upon it, sufficiently preserves the evidence essential to show the validity of the meeting. There is no statute, however, requiring the clerk to record the warrant; and, although the record when made has been accepted by the courts as evidence of the contents of the warrant and the manner of its service (*Commonwealth v. Sullivan et al.*, 165 Mass. 183), it is not entirely certain that if the question were directly raised the record of the clerk would be competent evidence of the contents of the warrant or of the service of it.

It is undoubtedly the safer course for town clerks to follow the practice of private corporations in recording the call for the meeting with the proceedings of the meeting itself; but the warrant itself is, nevertheless, the best evidence, and should be preserved.

#### PUBLIC RECORDS. — REPAIR. — EXPENSE.

[Opinions Attorney-General, Vol. 1, p. 484.]

St. 1897, c. 439, § 6, requires every person having the custody of the public records of a county, city, or town to keep them in repair, and such county, city, or town must bear the expense, whether it has appropriated money for that purpose or not.

I have your letter of the 7th, inquiring whether, under St. 1897, c. 439, § 6, any person having the custody of any public records can lawfully incur expense which a county, city, or town will be obliged to pay, unless an appropriation for the purpose has previously been made by the county, city, or town.

The statute in question provides that "Every person having the custody of any public records of a county, city, or town, consisting of written or printed books, shall, at the expense of the county, city, or town, have all such books properly and substantially bound," etc. This statute makes the duty of the custodian imperative, whether an appropriation is made by the

county, city, or town, or not, and even if no such appropriation be made. He must obey the law. Failure to perform this duty by him is punishable under the provisions of section 12 of the same act.

The liability of the county, city, or town for the expense so incurred does not arise from any act of the corporation itself, but exists by virtue of the statute provision. It is plainly the duty of the county, city, or town to appropriate money for the purpose specified in the act; but if it fails to perform its duty it does not thereby escape its liability therefor.

BOSTON, August 1, 1906.

ROBERT T. SWAN, Esq., *Commissioner of Public Records, 104 State House.*

DEAR SIR: — In reply to your request for my opinion upon the following questions: —

1. Would a commission created by an act of the Legislature to erect a building in which public records were to be kept, be required to provide fireproof rooms, safes, or vaults for such records unless so instructed by said act?

2. Would a commission or committee empowered by vote of a city council, or a commission or committee empowered by vote of a town, to erect a building in which public records were to be kept, be required to provide fireproof rooms, safes, or vaults for such records unless so instructed by said vote?

3. Would the erection of any of the above-mentioned buildings by commissions or committees relieve the officers or boards, county commissioners, city councils, and selectmen of their duty to provide and maintain fireproof rooms, safes, or vaults, as required by chapter 35, section 18, of the Revised Laws?

4. Would the members of a board of selectmen, who by vote of the town are members of a building committee, be relieved of their duty under said section 18, provided the majority of such committee had failed to make proper provision for the safety of the records?

Revised Laws, c. 35, § 18, provides: "Officers or boards in charge of a state department, county commissioners, city councils, and selectmen shall, at the expense of the commonwealth, county, city or town, respectively, provide and maintain fireproof rooms, safes or vaults for the safe keeping of the public records of their department, county, city or town, other than the records in the custody of teachers of the public schools, and shall furnish such rooms only with fittings of non-combustible materials."

Revised Laws, c. 20, § 5, provides: "Each county except Suffolk shall provide suitable court-houses, jails, houses of correction, fireproof offices

and other necessary public buildings for the use of the county; but the county of Dukes County need not provide a house of correction."

Chapter 20, § 7: "The city of Boston shall provide the public buildings necessary for the use of the county of Suffolk and pay all county charges, except as hereinafter provided."

Chapter 152, § 51: "County commissioners shall provide and maintain suitable rooms for the use of the probate courts, ample fireproof rooms and suitable alcoves, cases and boxes for the safe keeping of all records, files, papers and documents which belong to the several registries of probate, and shall provide all books which may be necessary for keeping the records, and all printed blanks and stationery which are used in probate proceedings."

1. I understand that the act of the Legislature which the commissioner has especially in mind is St. 1906, c. 534, which is "An Act to provide for an enlargement of or an addition to the court house in the county of Suffolk."

This act provides in its first section for the appointment of a commission. Its second section provides that "Said commission, acting in behalf of the Commonwealth, shall employ an architect or architects and cause to be prepared plans for additional court room accommodations for the county of Suffolk, by adding stories upon the present building and providing therein court rooms and conveniences appurtenant thereto, sufficient for the needs of the courts and for the prompt administration of justice in said county," and that the commissioners shall "contract for the constructing, completing and furnishing such addition or enlargement of said building."

This act does not specifically authorize the providing of places for the storing of public records. "Court rooms and conveniences appurtenant thereto" may well be interpreted to include places for the storage of the records of such courts, and in providing for such places the commission may provide that they be fireproof.

The commission is not, however, required to provide fireproof rooms, etc.

From the application of Revised Laws, c. 20, § 5, *supra*, the county of Suffolk is expressly excepted.

St. 1906, c. 534, is, so far as an addition to the court house is concerned, a substitute for Revised Laws, c. 20, § 7.

Revised Laws, c. 162, § 51, quoted *supra*, is limited in its application to county commissioners. The terms of Revised Laws, c. 35, § 18, quoted *supra*, do not include the commissioners appointed under the act of 1906.

Statutes dealing with the same subjects are to be read together. The statutes above quoted clearly indicate an intention on the part of the Legislature that fireproof rooms, etc., be provided for public records, including



the records of courts, but they do not, in my opinion, impose upon the commission in question a duty to furnish such fireproof rooms, etc.

In the absence of any indication to the contrary, the principle of interpretation here applied would be applicable in general to acts creating commissions to erect buildings in which public records are kept.

2. The same principle is applicable in the case of votes by city councils and by towns. By Revised Laws, c. 35, § 18, the duty is imposed upon city councils to furnish fireproof rooms, etc. The natural intrepertation of a vote by a city council to erect a building in which public records should be kept would be that it was a vote in the carrying out of the provisions of this section. A commission acting under such a vote would, in my opinion, have authority to erect a building containing fireproof rooms, etc., so far as such fireproof rooms, etc., were part of the building. It cannot, however, be said that without definite instructions to that effect such a commission would be required to provide for fireproof rooms, etc. A vote by a town empowering a commission or committee to erect a building in which public records were to be kept would be interpreted in the same way.

3 and 4. Clearly, no vote of city council or town could relieve the city council or the selectmen from the duties imposed upon them by Revised Laws, c. 35, § 18.

An act of the Legislature could, of course, relieve officers of duties imposed upon them by this section. I am, however, of opinion that the passage of an act authorizing a commission to erect a building in which public records should be kept would not by implication relieve the officers upon whom the duty was imposed by Revised Laws, c. 35, § 18, of their obligation. Repeals by implication are not favored, and a clear intention to repeal this section must be shown in order to relieve the officers upon whom the duty of providing fireproof rooms, etc., is imposed.

Yours very truly,

(Signed) DANA MALONE,  
*Attorney-General.*

#### PUBLIC RECORDS. — FOREIGN LANGUAGE.

HENRY E. WOODS, Esq., *Commissioner of Public Records.*

DEAR SIR: — In reply to your inquiry as to "whether or not a Register of Deeds within this Commonwealth is obliged under its laws to receive and record any instrument in a foreign language, even if the said instrument be accompanied by a translation," I advise you that in my opinion a register of deeds is not obliged to receive and record any instrument in a foreign language, even though such instrument be accompanied by a translation.

The purpose of recording an instrument in the registry of deeds is to give notice of the contents thereof. It follows that the record must be such that a person examining it with a reasonable degree of care and intelligence may obtain actual notice of the facts recorded. Persons making such examinations cannot, in my opinion, reasonably be required to be familiar with languages other than English, which is the language used in the conduct of the affairs of the Commonwealth and in ordinary business transactions. Since the record must be in English, and since it must be an accurate copy of the instrument recorded, the instrument must be in English. The record of a translation of an instrument would not be in compliance with the statutes requiring the recording of such an instrument. Even if both an original instrument in a foreign language and a translation of it were recorded, a person examining the record would have no assurance that the translation was accurate.

Very truly yours,

(Signed)

DANA MALONE,  
*Attorney-General.*

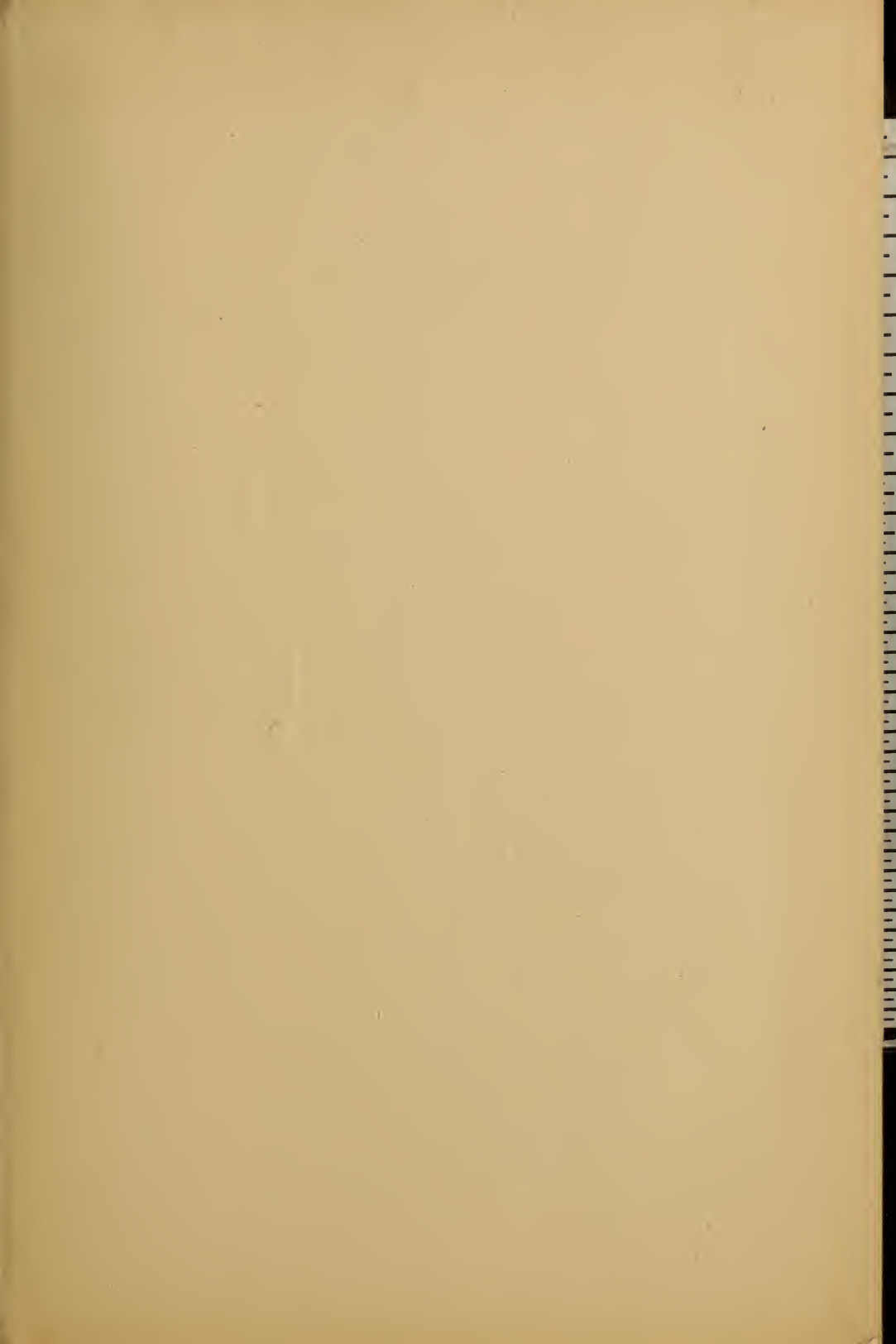












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